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In the Matter of)	
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Sprint Communications Company LP Application)	WC Docket No. 10-226
for Review of the Tekstar Communications, Inc.)	
Tariff)	
)	

Pursuant to the Wireline Competition Bureau’s *Public Notice*¹, All American Telephone Co., Inc. (“All American”) submits its Reply in the above-captioned rulemaking proceeding. In this Reply, All American demonstrates that the procedural approach taken by the Commission in this case is fundamentally at odds with the mandates of the federal Communications Act, and is done for the sole purpose of evading the Act’s statutorily-mandated deadlines for decision-making. As such this proceeding is *ultra vires*, and must be terminated.

¹ *Comment Sought on Sprint Communications Company LP Application for Review of the Tekstar Communications, Inc. Tariff*, WC Docket No. 10-226, DA 10-2196 (rel. Nov. 16, 2010) (*Public Notice*).

³ *Tekstar Communications, Inc. Tariff F.C.C. No. 2, Transmittal No. 3* (filed September 23, 2010).

Commissions's rules, that the rates are unlawful, that Tekstar allegedly engaged in revenue sharing that was somehow unlawful, and that Tekstar allegedly engaged in unlawful cross-subsidization. No other carrier, including AT&T, exercised its right under Section 204(a) of the Communications Act to challenge the tariff.

On October 6, 2010, the Commission issued a *Report* that allowed the Tekstar tariff to take effect.⁴ That order stated that:

[W]e conclude that the parties filing petitions against the tariff transmittals listed in this Report have not presented compelling arguments that these transmittals are so patently unlawful as to require rejection. Similarly, we conclude the parties have not presented issues regarding the transmittals that raise significant questions of lawfulness that require investigation of the tariff transmittals listed in this Report.⁵

In taking this action, the Commission allowed a tariff filed on 15 days' notice to take effect, thereby conferring upon it "deemed lawful" status under § 204(a)(3) of the Communications Act.⁶ Under that section of the Act, "deemed lawful" status is conferred automatically by action of the statute unless the Commission takes action to suspend and investigate the tariff under § 204(a)(1) of the Act.⁷

Nevertheless, after issuing its Report, and effecting the Tekstar tariff's "deemed lawful" status, the Commission subsequently issued the Public Notice of November 16, 2010, creating a new, docketed rulemaking proceeding, and soliciting further comment on the Tekstar tariff. The only party filing comments opposing the Tekstar tariff was AT&T, which as noted above, neglected to file a petition to reject or suspend the Tariff at the time it was filed. AT&T raises a

⁴ *Protested Tariff Transmittals Action Taken*, WCB/Pricing File No. 10-09, DA 10-1917 (rel. Oct. 6, 2010) (the *Report*).

⁵ *Id.*

⁶ 47 U.S.C. § 204(a)(3).

⁷ 47 U.S.C. § 201(a)(1).

new argument against the tariff, and urges the Commission to reverse “the [Wireline Competition] Bureau’s failure to reject or suspend Tekstar’s tariff”⁸

The Commission’s action in this proceeding is wholly unprecedented – it has literally never taken action like this before. Why would the Commission re-open debate on the Tekstar tariff less than six weeks after it concluded that neither Sprint nor Qwest raised sufficient concerns to justify any action against the tariff? It clearly contravenes the principles of regulatory efficiency to invite a duplicative proceeding immediately after a dispositive *Report* was issued. Why would the Commission invite oppositions to the Tekstar tariff by parties that, despite having notice, neglected to file a petition against the tariff within the timeframe set by the Commission’s rules? Considerations of regulatory efficiency normally deny such multiple “bites at the apple.” And why would the Commission open a docketed rulemaking proceeding in lieu of the investigation process that is expressly required for review of tariffed rates terms and conditions by the Communications Act, and which the Commission has routinely employed in the past?

There is only one reason for the unprecedented, duplicative and wasteful procedure that the Commission has introduced for the first time in the instant case – **the Commission is taking extraordinary actions to evade the statutory deadlines that apply to investigations of tariffed rates, terms and conditions.**

Section 204(a)(1) of the Communications Act allows the Commission to prevent a newly filed tariffed rate from taking effect, by suspending the tariff. **But this suspension period may not exceed five months.**

⁸ Comments of AT&T Corp., WC Docket No. 10-226, at 6 (filed Dec. 1, 2010).

Section 204(b) of the Communications Act empowers the Commission to initiate a hearing to investigate a tariffed rate. **But such hearing must be concluded and an order issued within five months.**

And Section 208(b) allows the Commission to initiate a complaint proceeding to evaluate the lawfulness of any “charge, classification, regulation, or practice.” **But such complaint proceeding must be concluded within five months.**

By its unprecedented action, the Commission has subjected the Tekstar tariff to scrutiny under the one proceeding that is not constrained by such a statutory mandate – a docketed rulemaking proceeding. But such a proceeding has rarely been used to evaluate tariffed rates, terms and conditions, and it has never been used in this way since the five-month statutory deadlines discussed above were introduced into the Communications Act by the Telecommunications Act of 1994.

For reasons known only to itself, this Commission has steadfastly refused to issue any decisions that resolve the dispute between LECs that carry conference traffic and IXC's that have engaged in a patently unlawful campaign of self help by refusing to pay tariffed access charges. The Commission has refused to provide certainty to the industry despite multiple primary jurisdiction referrals from federal district courts, repeated demands by both LECs and IXC's, and even letters from members of the Senate and House of Representatives.

The Commission's action constitutes a shocking abjuration of its statutory obligations. The Commission's adoption of extraordinary – and extraordinarily transparent – procedural contortions to evade the five-month decision-making deadlines imposed by §§ 204 and 208 of the Communications Act defies the will of Congress and constitutes a gross disservice to the public interest. Because the establishment of the instant docketed proceeding evades the

statutory deadlines required by §§ 204 and 208 of the Communications Act, it is *ultra vires*, and the Commission must terminate this proceeding and dismiss the pending arguments against the tariff.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jonathan E. Canis". The signature is fluid and cursive, with the first name "Jonathan" and last name "Canis" clearly distinguishable.

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Dated: December 6, 2010

CERTIFICATE OF SERVICE

I hereby affirm that on December 6, 2010, I caused true and correct copies of the attached

Reply of All American Telephone Co. Inc. to be served on the parties shown below:

Dated: December 6, 2010
Washington, D.C.

/s/ Katherine Barker Marshall

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